

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION**

**DOUGLAS B. STALLEY, on behalf of  
the United States of America**

**PLAINTIFF**

**V.**

**NO. 3:07CV00006 GTE**

**AMERIS HEALTH SYSTEMS, LLC**

**DEFENDANT**

**ORDER**

Presently before the Court is Defendant's Motion to Dismiss (Docket # 5). Plaintiff filed this action on behalf of the United States of America seeking recovery under the Medicare Secondary Payer Act ("MSP"), 42 U.S.C. §1395y(b). This case is one of a large number of similar cases which have been filed across the country. At least five other cases have been filed in this Court: *Douglas B. Stalley, on behalf of the United States of America v. Catholic Health Initiatives, et. al.*, Docket No. 4:06CV00629-GH; *Douglas B. Stalley, on behalf of the United States of America v. Triad Hospitals, Inc., et. al.*, Docket No. 3:06CV00093-WRW; *Douglas B. Stalley, on behalf of the United States of America v. Select Medical Corp.*, Docket No. 4:06CV001711-JMM; *Douglas B. Stalley, on behalf of the United States of America v. Baptist Health, an Arkansas Corporation*, Docket No. 4:07CV00024-JMM; and *Douglas B. Stalley, on behalf of the United States of America v. Baptist Memorial Health Care Corp.*, Docket No. 2:06CV00234-JMM.

United States District Judges George Howard and William R. Wilson, Jr. dismissed the cases filed in their courts pursuant to Fed. R. Civ. P. 12(b)(1) and (6). Plaintiff appealed to the Eighth Circuit, and the undersigned stayed this action. On November 27, 2007, Eighth Circuit affirmed the decisions of the district court judges holding that the suit authorized by 42 U.S.C. §

1395y(b)(3)(A) is a private cause of action, which requires the plaintiff to have standing in his own right, rather than a *qui tam* statute, which allows the plaintiff to assert injury to the United States. *Douglas B. Stalley, on behalf of the United States of America v. Catholic Health Initiatives, et al.*, Case No. 06-4121 (8th Cir. Nov. 27, 2007). Similarly, in this case, Stalley does not have standing to pursue this action. The private right of action provided by 42 U.S.C. § 1395y(b)(3)(A) is not a *qui tam* statute, and Stalley is a volunteer who lacks any injury in fact. On January 11, 2008, the Eighth Circuit Court of Appeals issued its mandate.

Based upon the decision of the Eighth Circuit Court of Appeals, this Court finds that Defendant's motion should be granted, and this case must be dismissed with prejudice.

Accordingly,

IT IS THEREFORE ORDERED THAT Defendant Ameris Health Systems, LLC's Motion to Dismiss (Docket No. 5) be, and it is hereby, GRANTED. Plaintiff's Complaint is DISMISSED with prejudice. The Clerk is directed to close the case.

IT IS SO ORDERED this 28<sup>th</sup> day of January, 2008.

/s/Garnett Thomas Eisele  
UNITED STATES DISTRICT JUDGE